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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,541	09/14/2005	Helmut Schon		4411
7590	01/28/2008		EXAMINER	
Max Fogiel 44 Maple Court Highland Park, NJ 08904			RIDDLE, KYLE M	
		ART UNIT	PAPER NUMBER	
			3748	
		MAIL DATE	DELIVERY MODE	
		01/28/2008	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No.	Applicant(s)
	10/551,541	SCHON ET AL.
Examiner	Art Unit	
Kyle M. Riddle	3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 September 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4,6,7,10 and 15 is/are rejected.
- 7) Claim(s) 2,3,5,8,9,11-14 and 16-21 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 September 2005 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Oath/Declaration

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Specifically, applicant's oath/declaration states "material to the examination" and "1.56(a)" when the oath/declaration should state --material to patentability-- and --1.56--.

Specification

1. The disclosure is objected to because of the following informalities: Page 5, second to last paragraph, line 4 of the paragraph, "region 5" should read --region 5b--.

Appropriate correction is required.

Claim Objections

2. Claim 1 is objected to because of the following informalities: Page 2, claim 1, line 3 of the claim, "can" should read --cam--. Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned

with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, and 6 of U.S. Patent No. 7,296,546. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the instant application is broader in scope than that of the cited patent that also contains more specific limitations. The difference between claim 1 of the instant application and claims 1, 4, and 6 of the patent lies in the fact that the patent claim includes many more elements and is thus more specific. See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claim 1 of the instant application is anticipated by claims 1, 4, and 6 of the patent, it is not patentably distinct from these claims.

5. Claim 4 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, and 6 of U.S. Patent No. 7,296,546. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 4 of the instant application is broader in scope than that of the cited patent that also contains more specific limitations. The difference between claim 4 of the instant application and claims 1, 4, and 6 of the patent lies in the fact that the patent claim includes many more elements and is thus more specific. See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claim 4 of the instant application is anticipated by claims 1, 4, and 6 of the patent, it is not patentably distinct from these claims.

6. Claim 6 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 5, and 6 of U.S. Patent No. 7,296,546. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 6 of the instant application is broader in scope than that of the cited patent that also contains more specific limitations. The difference between claim 6 of the instant application and claims 1, 4, 5, and 6 of the patent lies in the fact that the patent claim includes many more elements and is thus more specific. See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claim 6 of the instant application is anticipated by claims 1, 4, 5, and 6 of the patent, it is not patentably distinct from these claims.

7. Claim 7 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 6, and 10 of U.S. Patent No. 7,296,546. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 7 of the instant application is broader in scope than that of the cited patent that also contains more specific limitations. The difference between claim 7 of the instant application and claims 1, 4, 6, and 10 of the patent lies in the fact that the patent claim includes many more elements and is thus more specific. See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claim 7 of the instant application is anticipated by claims 1, 4, 6, and 10 of the patent, it is not patentably distinct from these claims.

8. Claim 10 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 6, and 11 of U.S. Patent No. 7,296,546. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 10 of the instant application is broader in scope than that of the cited patent that also

contains more specific limitations. The difference between claim 10 of the instant application and claims 1, 4, 6, and 11 of the patent lies in the fact that the patent claim includes many more elements and is thus more specific. See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

Since claim 10 of the instant application is anticipated by claims 1, 4, 6, and 11 of the patent, it is not patentably distinct from these claims.

9. Claim 15 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 6, 10, and 13 of U.S. Patent No. 7,296,546. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 15 of the instant application is broader in scope than that of the cited patent that also contains more specific limitations. The difference between claim 15 of the instant application and claims 1, 4, 6, 10, and 13 of the patent lies in the fact that the patent claim includes many more elements and is thus more specific. See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claim 15 of the instant application is anticipated by claims 1, 4, 6, 10, and 13 of the patent, it is not patentably distinct from these claims.

Allowable Subject Matter

10. Claims 2, 3, 5, 8, 9, 11-14, 16-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of 5 patents.

- Morrn (U.S. Patent 6,481,399) discloses a mechanical regulation stroke adjustment apparatus with multiple cams and a guiding block.

- Morrn (U.S. Patent 6,792,903) discloses a mechanical regulation stroke adjustment apparatus with a bolt or bearing for supporting an intermediate link.

- Schleusener et al. (U.S. Patent 6,907,852) disclose a valve operating device with levers and links for various lifts.

- Schon et al. (U.S. Patent 6,997,153) disclose a variable valve actuating device significantly like applicant's.

- Schon et al. (U.S. Patent 7,302,922) disclose a variable valve actuating device significantly like applicant's.

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kyle M. Riddle whose telephone number is (571) 272-4864. The examiner can normally be reached on M-F (07:30-5:00) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Denion can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Kyle M. Riddle
Examiner
Art Unit 3748

kmr


THOMAS DENION
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700